

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 104 of 1988

in

SPECIAL CIVIL APPLICATION No 3340 of 1986

with

CIVIL APPLICATION No 12873 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DEEPAKKUMAR RAISINGBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR P.V. Hathi, for Appellant

M/S MG DOSHIT & CO for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE A.K.TRIVEDI

Date of decision: 31/08/2000

ORAL JUDGEMENT(Per: R.K. Abichandani,J.)

The appellant challenges the order of the learned Single Judge dated 29th March, 1988 rejecting his petition in which he had challenged the order of his termination from service dated 25th June, 1986 which was passed on the ground that the Head Mechanic Mr. Mansuri having been reverted to his original post, and thereby, a regular candidate having become available there was no post in which the petitioner could be continued.

2. The petitioner was by an order dated 18th March, 1981, appointed as Mechanic Grade III at the Mobile Workshop of the District Panchayat, Valsad by the District Development Officer, District Panchayat, Valsad. The terms and conditions of his appointment were attached to that order. His services were liable to be discontinued ,at any time without notice, because he was appointed purely on a temporary basis. It has come in the record of these proceedings that even before the impugned order of termination of the petitioner from services there was an order made on 27th September, 1985 by which his services were terminated and that order was challenged by him in Special Civil Application no.5420/85. In that petition, a statement was made on behalf of the respondents that the order of termination will not be implemented till a regularly recruited candidate became available and that in case of necessity, the respondents will pass a fresh order. In view of this statement, the petition came to be withdrawn. Since a fresh order was required to be made, the earlier order did not survive as per the said statement.

3. Thereafter, the impugned order dated 25th June, 1986 was passed stating that Mr. G.I. Mansuri who was the Head Mechanic had been reverted to his original post of Mechanic, and therefore, a candidate regularly recruited had become available and there was no post of Mechanic, in which, the petitioner could be continued. The petitioner was, therefore, ordered to be removed from service with immediate effect.

4. In his challenge against the order of termination, the petitioner contended that an employee who was reverted from a superior post did not come within

the expression " regularly recruited candidate", and therefore, the petitioner ought not to have been removed from service on the ground that Mr. Mansuri was reverted from the post of Head Mechanic as Mechanic. The learned Single Judge did not accept this contention for the reason that the expression carried within its sweep a regularly recruited candidate who came to be reverted from the higher post, who was required to be accommodated in his original post, from which he had been earlier promoted and which he was entitled to hold. The learned Single Judge also did not accept the contention of the petitioner that in view of the nature of his appointment and since he had completed the period of probation, the termination of his services was not warranted. It was held that since the earlier petition was withdrawn the petitioner and the petitioner was deemed to have given up the other contentions.

5. It appears that thereafter, this appeal had come up for hearing before the Division Bench of Honourable Mr. Justice B.C. Patel and Hon'ble Mr. Justice C.K. Buch and the Court by its judgment and order dated 15th December, 1998 dismissed the appeal. That order was challenged before the Honourable Supreme Court in Civil Application no.5416/99 and the Supreme Court set it aside on the ground that no proper assistance was rendered by the learned Counsel for the appellant to the High Court and that the appellant should not suffer on that count. The Supreme Court took note of the fact that there were certain documents which were placed on record before it which merited consideration by the High Court particularly, the order dated 8th January, 1987 which shows that Mr. Mansuri was to be continued in the post of his promotion and was not to be reverted as stated in that order.

The learned Counsel for the appellant heavily relies upon the order dated 8th January, 1987 made by the Gujarat Civil Services Tribunal, Gandhinagar in Appeal no.424/86/163 of Mr. G.I. Mansuri, in which a statement made by the respondent-authorities was recorded and the appeal was disposed of as withdrawn in view of that statement. As per the said statement made by these respondents, the Director had given a written undertaking that until an officer senior to Shri G.I. Mansuri was promoted to the post which was held by Mr. Mansuri, Mr. Mansuri would be continued in that post. Thus, since Mr. Mansuri was assured to be continued in the post of Head Mechanic, the very basis of the impugned order of removal of the petitioner from service did not survive. The impugned order clearly recited that the petitioner was

being removed because Mr. Mansuri was reverted from the post of Head Mechanic as Mechanic, thereby, leaving no post vacant in which the petitioner could be continued. Since the very basis of the impugned order removing the petitioner from service did not survive as Mr. Mansuri was not in fact reverted, the impugned order cannot be sustained.

7. We may also take note of the fact that as per the terms and conditions of the appointment to the post of Mechanic which are at Annexure "A" collectively to the petition, though the petitioner's appointment was purely temporary, it was stated in clause 9 of the terms and conditions that the appointment was made under Sec.203 of the Gujarat Panchayats Act and in Clause 13, it was stated that it was made for the first two years on probation period. In Clause 10 of the terms and conditions it was stipulated that this temporary appointment was made in anticipation of confirmation from the District Panchayat Selection Committee and if not sanctioned by the said committee, the petitioner would be removed from the services; or if there is a candidate available on the waiting list, that candidate will be appointed on its recommendation and the petitioner would be removed. In Clause 12, it was further stipulated that when the District Panchayat Selection Committee gives the advertisement for this post, at that time, within the prescribed time limit, a required application should be made by this employee and he was required to get through in the written test/ interview failing which he would be removed from the services. None of the conditions stated in Clause 10 and 12 are made a ground for removing the petitioner and it appears that he had completed his period of promotion. These aspects were not considered by the learned Single Judge simply on the ground that the petitioner had earlier withdrawn the petition in which he had challenged the order of termination which was made on 27-9-1985. It may be noted that Special Civil Application no.5420/85 in which the present appellant had challenged the order of termination passed on 27-9-1985 was withdrawn on 16-12-1985 in view of the statement that the impugned order would not be implemented till regularly recruited candidates became available and that in case of necessity, the respondent will pass a fresh order. Therefore, the challenge against the initial order did not at all survive and a fresh order was stipulated to be passed if other regularly recruited candidates became available. Therefore, it can never be said that the petitioner had given up all other challenges against his termination. It was, therefore, open for the petitioner when a fresh order of termination

was made, to challenge it on the grounds available against that order of termination including the ground that he had completed the probation period of two years which was stipulated in the terms and conditions of his appointment. It was equally open for the respondents to agitate the contention on the basis of the other terms and conditions of his appointment. However, since the impugned order of termination has been made only on the ground that Mr. Mansuri was reverted from the post of Head Mechanic to the post of Mechanic, there is no post available in which the petitioner could be continued as mechanic, we are not called upon to decide those other aspects. It clearly appears that Mr. Mansuri has continued in the post of Head Mechanic by virtue of the statement made by the respondents before the Tribunal on the basis of which Special Civil Application no.5420/85 was withdrawn by the petitioner.

8. Since the very basis of the order of termination does not survive, the impugned order of termination of the petitioner's service dated 25-6-1986 which is at Annexure "B" to the petition is hereby set aside. The respondent is directed to reinstate the petitioner in service with all backwages for the period that he stood relieved on the basis of the impugned order. Rule is made absolute accordingly with no order as to costs.

(R.K.Abichandani,J.)

(A.K.Trivedi,J.)

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